Response to Questions of the Honorable Max Baucus
Prepared by the EPA Office of Solid Waste and Emergency Response and the Office of Prevention, Pesticides and Toxic Substances

1. **Please discuss in detail the Administrator's decision to grant authority to EPA to remove contamination from homes in Libby.**

Response:

The Comprehensive Emergency Response, Compensation and Liability Act (CERCLA) §104(a)(3)(B) expressly limits EPA's authority to address a release "from products which are part of the structure of, and result in exposure within, residential buildings or business or community structures...". Sec 104(a)(4), however, provides an exception if the Administrator finds the release or threatened release constitutes a public health or environmental emergency. The EPA considered invoking this provision based upon the assumption the attic insulation in Libby homes was a product. This provision has not been invoked in the 23 year history of the Act.

EPA determined that it has the authority to remove the insulation in Libby without relying upon this exception because the insulation, in the unique circumstances of Libby, is not a "product." This rationale was laid out in the May 9, 2002, Action Memorandum Amendment:

> This action is based upon the unique circumstances in Libby, which include not only the level of cumulative exposure and multiple pathways, but also the highly unusual facts indicating that homes in Libby contain insulation that consists of the asbestos-containing vermiculite mined at Libby that was not inspected, packaged, labeled, warranted, regulated or sold as a commercial product.

EPA chose not to rely upon CERCLA's health emergency provision, in part, to minimize the possibility of removal work being delayed by possible legal challenges to this untested approach, and instead relied upon more traditional legal authorities.

2. **Please also discuss the unique elements of the situation in Libby, and how these unique elements impacted your decision to allow the cleanup action. Please indicate how the presence of tremolite asbestos and/or "Libby fiber" is a factor in the unique situation in Libby, Montana.**

Response:

EPA funded ATSDR to review the health statistics for Libby residents. This review found that the rate of asbestos-related mortality in the community is 40 times higher than the average in Montana and 80 times higher than the national average. ATSDR also conducted an evaluation of the health of Libby residents, providing chest X-rays, breathing tests, and interviews to characterize the potential exposures and health of the population. The ATSDR study concluded that a substantial segment of the population has asbestos-related scarring, lung abnormalities or impaired breathing. Five percent of these impacted residents could identify no potential route of exposure, other than having lived in the Libby Valley.

In addition to these health impacts, Libby differs from other sites with amphibole asbestos contamination for other reasons. The Libby mine was the first and, for many years, the world's largest producer of vermiculite ore. EPA estimates that vermiculite production may have exceeded 6 million tons during the years that W.R. Grace owned the mine. This ore was milled and processed in Libby, which means much of the asbestos was removed from the product, and stayed in Libby. This waste found its way into homes, school yards, gardens, road beds and many other places in the community, where people continued to be exposed for decades.

As a point of clarification, contrary to recent press reports, EPA has gathered a large amount of information from W.R. Grace and other sources in order to identify potential risks related to vermiculite insulation. The Agency has used this data to pursue the cleanup work underway at Libby and 22 contaminated processor sites which used Libby ore.

3. **Please also discuss EPA's previous experience using a declaration of a public health emergency as a means to garner specific health care resources for a community like Libby, if such a declaration has ever been made. Please discuss the process for requesting that a second declaration be declared in Libby for the separate purpose of garnering health care resources in Montana. Please detail any communications EPA has had with ATSDR regarding the impacts of declaring a public health emergency on the provision of health care resources to the residents of Libby, Montana. Please discuss what EPA's understanding is of the real resources that are available to a community like Libby, if such a declaration could be granted.**

Response:

In the 23-year history of the provision, EPA has never made a determination that a public health or environmental emergency exists to invoke CERCLA's exception to the general "product" rule, CERCLA Sec. 104 (a)(1)(4). In the part of the statute establishing ATSDR, CERCLA separately provides that ATSDR may, "in cases of public health emergencies...provide medical care and testing to individuals....", CERCLA Sec 104 (i)(1)(D).

EPA has worked closely with ATSDR and other parts of the Department of Health and Human Services (HHS) regarding the health of Libby residents, and has consulted with them on several occasions regarding this particular provision of CERCLA. EPA and ATSDR agree that EPA's decision to invoke the "emergency" provision of 104(a)(1)(4) to support a removal action, would not pre-determine the exercise of other CERCLA authorities related to public health emergencies under section 104(i)(1)(D) and (E). At the time the Action Memorandum Amendment was signed in May 2002, ATSDR advised EPA, for reasons unrelated to any perceived nexus between these two provisions, that the substantial health screening and monitoring services being provided the residents of Libby would not be affected by whether EPA invoked the emergency removal authority. ATSDR already has the necessary authority to conduct medical monitoring and the range of other activities it has been undertaking in Libby.

4. **I am interested in any information the EPA may have regarding the relationship between the removal of contaminated materials from homes in Libby, and EPA's**

scientific understanding of the health risks posed by Zonolite insulation, or other vermiculite insulation manufactured from ore mined in Libby, Montana.

Response:

The Agency for Toxic Substances and Disease Registry (ATSDR) identified many different routes of asbestos exposure for the residents of Libby. Insulation was one of the 16 pathways ATSDR considered in its study. The ATSDR report found that four factors were highly associated with the likelihood of having asbestos-related health impacts, including working for the mine/processor, living in the same house with a worker, playing on vermiculite or waste piles, and having multiple exposure pathways. The study did not show that insulation, by itself, could be linked with the health impacts found in Libby.

5. **Please discuss EPA's understanding of the differences between tremolite asbestos and chrysotile asbestos in terms of the relative toxicity of each form of asbestos, and in terms of the unique health risks posed by tremolite asbestos as compared to chrysotile asbestos. Please discuss in detail any studies conducted by, or planned by EPA, or by any other federal agency working with EPA, to study tremolite asbestos and/or "Libby fiber."**

Response:

EPA has begun an update of its Integrated Risk Information System (IRIS) file for asbestos as a result of the activities occurring in Libby. This includes a complete update of the scientific literature for asbestos, the carcinogenic and non-carcinogenic effects, exposure pathways, and risk assessment methodology. It is normally a three to five-year process to complete this type of review. However, EPA is expediting the process as much as possible. EPA is able to expedite this process, in part, because of ATSDR's work related to Libby and vermiculite processor sites around the country, which has added significantly to our understanding of the unique situation in Libby and has improved our understanding of asbestos exposure and toxicity.

As part of this update and the establishment of differences between tremolite asbestos and chrysotile asbestos, in May 2001, EPA sponsored a Public Forum on asbestos minerals. Expert scientists, with years of research experience, discussed the current literature base for asbestos exposure, toxicity, and risk assessment. Additionally, EPA hosted a Peer Consultation meeting on February 25-27, 2003, for a panel of experts to discuss a revised risk assessment methodology for distinguishing the risks of exposure to amphibole asbestos fibers (Libby tremolite asbestos) and serpentine asbestos fibers. This methodology uses the differences in fiber sizes and shape to distinguish toxicologic hazards between the fiber types and provides a differential in the slope factor for risk assessment between the fiber types.